

#400

PBT

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FILED

MAY 10 2013

MICHAEL E. KUNZ, Clerk
By _____ Dep. Clerk

VICTOR ALVARADO
244 FIFTH AVENUE, FLOOR 2
NEW YORK, NY 10001-7945

CIVIL ACTION

Plaintiff

v.

NO.: **13 2567**

THE CITY OF CHESTER
1 FOURTH STREET
CHESTER, PA 19013
-and-

NATIONAL RAILROAD
PASSENGER CORPORATION
t/d/b/a AMTRAK
50 MASSACHUSETTS AVENUE
WASHINGTON, D.C. 20002
-and-

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
400 NORTH STREET
HARRISBURG, PA 17120

Defendants

COMPLAINT

I. PARTIES

1. Plaintiff, Victor Alvarado, is an adult individual and a citizen and resident of the State of New York, residing therein at 244 Fifth Avenue, Floor 2, New York, NY 10001-7945.

2. The City of Chester is a Pennsylvania municipality and a local agency, as defined in Political Subdivision Tort Claims Act, 42 Pa.C.S.A. § 8501 et.seq., organized and existing under the laws of the Commonwealth of Pennsylvania, with a principal place of business at 1 Fourth Street, Chester, PA 19013.

3. Pursuant to the provisions of 42 Pa.C.S.A § 5522, Plaintiff has placed the Defendant the City of Chester on notice of his injuries. (See, Letter, dated October 20, 2011, attached as Exhibit “A”).

4. National Railroad Passenger Corporation, t/d/b/a AMTRAK (hereinafter “AMTRAK”) is a federally chartered common carrier corporation, existing and organized pursuant to an Act of Congress, 49 U.S.C. § 24101 et. seq., with a principal place of business at 50 Massachusetts Avenue, Washington, D.C. 20002.

5. Commonwealth of Pennsylvania, Department of Transportation (hereinafter “Penndot”) is a Pennsylvania Commonwealth Agency as defined by the Political Subdivision Tort Claims Act, 42 Pa.C.S.A. § 8501 et.seq., with a principal place of business at 400 North Street, Harrisburg, PA 17120.

6. Pursuant to the provisions of 42 Pa.C.S.A § 5522, Plaintiff has placed Defendant Penndot on notice of his injuries. (See, Letter, dated October 20, 2011, attached as Exhibit “B”)

II. JURISDICTION OF THE COURT

7. The United States District Court for the Eastern District of Pennsylvania has original jurisdiction over this action pursuant to 28 U.S.C. § 1349 because Defendant Amtrak is a federally chartered corporation, created by an Act of Congress, 49 U.S.C. § 24101 et seq with Federal Government owing more than fifty percent of the stock.

8. The United States District Court for the Eastern District of Pennsylvania also has original jurisdiction over this action as the parties are diverse, pursuant to 28 U.S.C. § 1332A and the amount in controversy exceeds \$75,000.00.

9. The Plaintiff is resident of the State of New York.

10. Defendant, the City of Chester, maintains a principal place of business in the City of Chester, Pennsylvania.

11. Defendant Amtrak is a citizen of the District of Columbia as it maintains a principal place of business in Washington, D.C.

12. Defendant Pennsylvania Department of Transportation is a State Agency of the Commonwealth of Pennsylvania and hence is a citizen of Pennsylvania.

III. FACTUAL BACKGROUND

13. At all times material hereto, one or more of the above Defendants owned, operated, maintained and/or otherwise controlled a railroad bridge, located at or near the intersection of Fifth and Upland Streets in the City of Chester, Pennsylvania.

14. Based on information and belief, one or more of the above Defendants were also responsible for placing, maintaining and otherwise controlling height clearance traffic signs, designed and intended to notify drivers of tall vehicles, such as tractor trailers of the height clearance of the subject bridge/underpass and located near the approach to the subject railroad bridge.

15. On June 1, 2011 Plaintiff Victor Alvarado was the operator of a 2006 Century Freightliner Tractor, proceeding southbound on Upland Street, approaching the Amtrak's Fifth Street underpass.

16. As Victor Alvarado began to drive under the underpass, the exhaust pipes of his truck struck the underside of the bridge, causing Mr. Alvarado to sustain severe personal injuries which are further described below.

COUNT I
PLAINTIFF VICTOR ALVARADO V. DEFENDANT CITY OF CHESTER

17. Plaintiff hereby incorporates the preceding paragraphs by reference as though stated in full herein.

18. The negligence of Defendant, The City of Chester, consisted of but was not limited to the following:

- a. Failing to properly maintain the subject railroad bridge;
- b. Failing to ensure that there was proper street signage, warning motorists of the height of the bridge;
- c. Failing to ensure that the missing bridge height sign was replaced;
- d. Failing to prevent vandalism and/or removal of bridge height signs;
- e. Failing to warn Plaintiff and other motorists of the dangers presented by the low clearance of the bridge;
- f. Failing to erect, maintain and/or secure an advance information sign near the intersection nearest the end of the restricted bridge to allow drivers such as Plaintiff to avoid the height restricted bridge;
- g. Creating a nuisance on a public highway;
- h. Failing to exercise due care in fixing, replacing and/or maintaining the signage warning motorists as to the height of the bridge;
- i. Failing to notify appropriate entities, parties, individuals and/or authority and/or expertise, to fix or replace or place the height clearance signage approaching the bridge.

19. The aforesaid negligence of Defendant The City of Chester resulted in Plaintiff Victor Alvarado sustaining severe personal injuries which include but are not limited to the following:

- a. L5-S1 disc bulge with annular tear;
- b. Regional pain syndrome;
- c. Traumatically induced urinary incontinence;
- d. Left rotator cuff tear
- e. Severe pain in his neck, back and left shoulder;
- f. Neuritis and/or radiculitis of the thoracic and lumbosacral spine;
- g. Pain and suffering;
- h. Damage to his nerves and nervous system;
- i. Medical bills, past, present and future;
- j. Lost earnings and lost earning capacity.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter Judgment for Plaintiff and against Defendants.

COUNT II
PLAINTIFF VICTOR ALVARADO V. DEFENDANT AMTRAK

20. Plaintiff hereby incorporates by reference the preceding paragraphs as though stated in full herein.

21. The negligence of Defendant Amtrak consisted of but is not limited to the following:

- a. Failing to properly maintain the subject railroad bridge;
- b. Failing to ensure that there was proper street signage, warning motorists of the height of the bridge;

- c. Failing to ensure that the missing bridge height sign was replaced;
- d. Failing to prevent vandalism and/or removal of bridge height signs;
- e. Failing to warn Plaintiff and other motorists of the dangers presented by the low clearance of the bridge;
- f. Failing to erect, maintain and/or secure an advance information sign near the intersection nearest the end of the restricted bridge to allow drivers such as Plaintiff to avoid the height restricted bridge;
- g. Creating a nuisance on a public highway;
- h. Failing to exercise due care in fixing, replacing and/or maintaining the signage warning motorists as to the height of the bridge;
- i. Failing to notify appropriate entities, parties, individuals and/or authority and/or expertise, to fix or replace or place the height clearance signage approaching the bridge.

22. As a result of the aforesaid negligence of Defendant Amtrak, Plaintiff sustained injuries and damages as described in Paragraph 19 above.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter Judgment for Plaintiff and against Defendants.

COUNT III
PLAINTIFF VICTOR ALVARADO V. DEFENDANT PENNDOT

23. Plaintiff hereby incorporates by reference the preceding paragraphs as though stated in full herein.

24. The negligence and carelessness of Defendant Penndot consisted of but was not limited to the following:

- a. Failing to properly maintain the subject railroad bridge;

- b. Failing to ensure that there was proper street signage, warning motorists of the height of the bridge;
- c. Failing to ensure that the missing bridge height sign was replaced;
- d. Failing to prevent vandalism and/or removal of bridge height signs;
- e. Failing to warn Plaintiff and other motorists of the dangers presented by the low clearance of the bridge;
- f. Failing to erect, maintain and/or secure an advance information sign near the intersection nearest the end of the restricted bridge to allow drivers such as Plaintiff to avoid the height restricted bridge;
- g. Creating a nuisance on a public highway;
- h. Failing to exercise due care in fixing, replacing and/or maintaining the signage warning motorists as to the height of the bridge;
- i. Failing to notify appropriate entities, parties, individuals and/or authority and/or expertise, to fix or replace or place the height clearance signage approaching the bridge.

25. As a result of the negligence of Defendant Penndot Plaintiff sustained injuries and damages as outlined in Paragraph 19 above.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter Judgment for Plaintiff and against Defendants.

GALFAND BERGER, L.L.P.

BY: 

HENRY YAMPOLSKY, ESQUIRE

1835 Market Street, Suite 2710

Philadelphia, PA 19103

Phone: (215) 665-1600

Fax: (215) 564-2262

Email: hyampolsky@galfandberger.com

Attorney for Plaintiff

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Alvarado, Victor

DEFENDANTS

The City of Chester
National Railroad Passenger Corporation
Commonwealth of Pennsylvania

13 2567

(b) County of Residence of First Listed Plaintiff/out of state
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE:

IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)
Galfand Berger, LLP
1835 Market Street, Philadelphia, PA 19103
(215) 665-1600

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- | | | | |
|---|--|---|--|
| Citizen of This State | PTF <input type="checkbox"/> DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | PTF <input type="checkbox"/> DEF <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input checked="" type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609		

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. section 1332A

Brief description of cause:

Personal injuries in motor vehicle accident resulting from improper signage on railroad bridge.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

MAY 10 2013

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING FOR

JUDGE

MAG. JUDGE

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

PBT

13 2567

Address of Plaintiff: 244 Fifth Avenue, Floor 12, New York, N.Y. 10001-7945

Address of Defendant: 1 Fourth Street, Chester, PA 19013; 50 Massachusetts Avenue, Washington, D.C. 20002; 400 North Street, Harrisburg, PA 17120

Place of Accident, Incident or Transaction: Fifth and Upland Street, Chester, PA

(Use Reverse Side For Additional

Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐

No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐

No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge _____

Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?

Yes ☐

No ☒

2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

Yes ☐

No ☒

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

Yes ☐

No ☒

4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?

No ☒

Yes ☐

CIVIL: (Place in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts

2. ☐ FELA

3. ☐ Jones Act-Personal Injury

4. ☐ Antitrust

5. ☐ Patent

6. ☐ Labor-Management Relations

7. ☐ Civil Rights

8. ☐ Habeas Corpus

9. ☐ Securities Act(s) Cases

10. ☐ Social Security Review Cases

11. ☐ All other Federal Question Cases

(Please specify) _____

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts

2. ☐ Airplane Personal Injury

3. ☐ Assault, Defamation

4. ☐ Marine Personal Injury

5. ☒ Motor Vehicle Personal Injury

6. ☐ Other Personal Injury (Please specify)

7. ☐ Products Liability

8. ☐ Products Liability — Asbestos

9. ☐ All other Diversity Cases

(Please specify) _____

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Henry Yampolsky, counsel of record do hereby certify:

☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

☐ Relief other than monetary damages is sought.

MAY 10 2013

DATE: _____

Henry Yampolsky

Attorney-at-Law

200213
Attorney I.D.

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: _____ Henry Yampolsky _____ 200213
Attorney-at-Law Attorney I.D.#

CIV. 609 (5/2012)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PBT

CASE MANAGEMENT TRACK DESIGNATION FORM

Alvarado, Victor : CIVIL ACTION

v. :

The City of Chester, National Railroad Passenger :
Corporation t/d/b/a AMTRAK, Commonwealth of :
Pennsylvania Department of Transportation :

NO. **13 2567**

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus — Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security — Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration — Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos — Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management — Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management — Cases that do not fall into any one of the other tracks. ()

()

5/10/13
Date

Henry Yampolsky
Attorney-at-law

Plaintiff
Attorney for

MAY 10 2013

<u>(215) 665-1600</u>	<u>(215) 564-2262</u>	<u>hyampolsky@galfandberger.com</u>
Telephone	FAX Number	E-Mail Address
(Civ. 660) 10/02		